

STEPHEN T. LANGHAM,

Appellant,

V.

**ALABAMA LAW ENFORCEMENT
AGENCY,**

Appellee.

Case No.: 19-18-JJW

The employment termination of Stephen Langham (hereinafter “Langham”) by the Alabama Law Enforcement Agency (hereinafter “ALEA”) is the subject of this Recommended Order. Langham was first employed by the State of Alabama as a social services caseworker in 2005 and as a state trooper beginning in 2007. His employment performance appraisals have historically been “exceeding standards.” Langham became an ALEA Trooper Senior in 2015. Langham’s employment was terminated by the ALEA appointing authority by letter dated March 11, 2019.¹

Langham's dismissal was recommended by Col. Charles Ward, DPS Director.

The charges forming a basis for Langham's discharge included:

- ## 1. Unlawful Activity Involving a Controlled Substance

¹ ALEA Exhibit 3.

2. Improper Handling of Drug Evidence
3. Possession of an Illegal Firearm
4. Improper Handling of Drug Evidence and Providing False Information.²

Langham timely appealed his dismissal by letter dated March 13, 2019.³ A Motion to Stay filed by Langham was granted on March 27, 2019.⁴ The undersigned reset this matter for hearing on April 8, 2021 and set the hearing for June 1, 2021.⁵ The hearing was held on that date.

The testimony, observation of the witnesses' demeanor and the documentary evidence lead, by a preponderance of the evidence, to a recommendation that the termination of Langham's employment with ALEA be upheld.

On June 1, 2021, the undersigned conducted a *de novo* hearing ("the hearing") at the offices of the Alabama State Personnel Department in Montgomery, Alabama, during which *ore tenus* and documentary evidence was received. Erin Dunagan, Esq. appeared as counsel for ALEA. Jim DeBardelaben, Esq. represented Stephen Langham.

² ALEA Exhibits 1 and 3.

³ ALJF.

⁴ ALJF.

⁵ ALJF.

At the beginning of the hearing, ALEA introduced, without objection, Exhibits 1-13. Langham introduced Exhibits 1-28, which were admitted, without objection. Langham's Exhibits 29-32 were objected to by ALEA and were not admitted. The undersigned informed the parties, without objection, that Langham's personnel file at the Alabama State Personnel Department would be included in the record and reviewed as evidence in this proceeding.

ALEA called as witnesses:

- (1) Michael Bryan "Mike" Trotter, Commander, ALEA's Integrity Unit, and
- (2) Marc Boyd, Sergeant, ALEA's Integrity Unit.

Langham called no witnesses.

I. PROCEDURAL HISTORY AND CHARGES

This matter was filed on March 13, 2019 and was stayed by the undersigned on Langham's motion on March 27, 2019.⁶ Langham had been charged by ALEA with six related felonies in a criminal complaint in Geneva County, Alabama on March 11, 2019. These felony charges were directly related to ALEA's dismissal charges against Langham.

ALEA, in its "Statement of Facts" in this matter in a letter dated and filed on March 25, 2019, alleged in pertinent part:

⁶ Langham claims a work-related injury on October 21, 2018. His appeal related to that is pending before Employee Injury Compensation Review Board. Any allegations regarding Langham's injury claim will be addressed by that board.

“The Department of Public Safety (“DPS”), now a division within ALEA, hired Stephen T. Langham as a Trooper in 2007. In 2018, ALEA received information alleging Langham had engaged in misconduct in violation of several personnel policies. On December 21, 2018, ALEA placed Langham on administrative leave pending an administrative investigation of the allegations. Subsequently, on March 4, 2019, Col. Charles Ward notified Langham of his recommendation that Langham’s employment be terminated based on the following charges, in brief:

Charge I – Unlawful Activity Involving a Controlled Substance, to wit, Langham admitted concealing three Oxycodone pills in a deodorant container and mailing them to a patient receiving inpatient treatment at Behavioral Health Services (“BHS”). Langham further stated, in an attempt to do the right thing, he notified BHS before the package was delivered to BHS’s patient. BHS Lead Counselor Tiffany Lively confirmed BHS received and intercepted a package containing three Oxycodone pills concealed in a deodorant container. However, Lively stated the package was intercepted because Langham’s estranged wife, not Langham, called to alert BHS that Langham had mailed such a package. Langham’s actions in this regard constitute violations of ALEA Personnel Policies and Procedures, Chapter 10, Section II, General Work Rules, subsection (1)(b)(10), Serious violation of other Agency rule(s): Chapter 10, Section XII, Employee/Witness Statements; DPS Policy

Order Number 1-0, Law Enforcement Code of Ethics; DPS Policy Order Number 2-25, Employee Conduct; and of ALEA Personnel Policies and Procedures, Chapter 10, Section II, General Work Rules, subsection (1)(b)(13), Conduct unbecoming a state employee. ...

Charge II – Improper Handling of Drug Evidence, to wit, Langham admitted failing to adhere to DPS’s evidence and seizure policy regarding a “bag of brown weed” recovered in a box found at Langham’s residence. Other drug evidence items were also recovered from Langham’s residence. Langham’s actions, in this regard, constitute violations of ALEA Personnel Policies and Procedures, Chapter 10, Section II, General Work Rules, subsection (1)(a)(4), Failure to perform job properly; ALEA Personnel Policies and Procedures, Chapter 10, Section II, General Work Rules, subsection (1)(b)(10), Serious violation of other Agency rule(s): DPS Policy Order Number 4-26, Evidence-Collection, Preservation, Storage, and Control. ...

Charge III – Possession of Illegal Firearm, to wit, Langham kept in his patrol vehicle, a pistol with the serial number removed. Langham admitted he failed to notify his supervisors that he found the pistol. Langham also stated he cleaned the pistol intending to turn it over to the local sheriff’s office, but never turned the pistol in pursuant to proper procedure. Langham admitted he was aware of and failed to follow the DPS policy related to confiscated and illegal firearms. Langham’s actions

in this regard constitute violations of ALEA Personnel Policies and Procedures, Chapter 10, Section II, General Work Rules, subsection (1)(a)(4), Failure to perform job properly; ALEA Personnel Policies and Procedures, Chapter 10, Section II, General Work Rules, subsection (1)(b)(10), Serious violation of any other Agency rule(s): DPS Policy Order Number 3-6, Unauthorized Weapons and Devices; and DPS Policy Order Number 3-7, Confiscated and Illegal Firearms.

Charge IV – Improper Handling of Drug Evidence and Providing False Information, to wit, Langham confiscated 30 benzodiazepine pills during a July 26, 2017, traffic stop. Langham stated he determined he could not make a criminal case and flushed the pills down the toilet in the presence of Senior Conservation Enforcement Officer Joel Hendron. Hendron stated he never witnessed Langham flush the pills. Hendron also stated that in such event an evidence destruction sheet would be required and that he would not have agreed to witness drugs being flushed into the sewage system which could result in ground contamination. Langham's actions in this regard constitute violations of ALEA Personnel Policies and Procedures, Chapter 10, Section II, General Work Rules, subsection (1)(a)(4), Failure to perform job properly; ALEA Personnel Policies and Procedures, Chapter 10, Section II, General Work Rules, subsection (1)(b)(1), Serious violation of other Agency rule(s): DPS Policy Order Number 4-26, Evidence – Collection, Preservation, Storage and Control; ALEA Policies and Procedures, Chapter 10,

Section XII, Employee/Witness Statements; and ALEA Policies and Procedures, Chapter 10, Section II, General Work Rules, subsection (1)(b)(13), Conduct unbecoming a state employee. ...”

“... Langham opted to waive his entitlement to a pre-disciplinary conference and, instead, submitted a written response on March 7, 2019. ... On March 11, 2019, after considering Langham’s work history and the preponderance of the evidence supporting Col. Ward’s recommendation, ALEA Secretary Hal Taylor notified Langham that his employment was terminated at the close of business on March 11.”

“The decision to terminate Langham’s employment was not made lightly and is justified under State Personnel Board Rule 670-X-19-.01(1)(b) and ALEA Personnel Policies and Procedures, Chapter 10, Section II, General Work Rules, subsection (1)(b), which both clearly notify employees that serious violations under both subsections (b) “may result in suspension or termination on the first offense. Termination is necessary in this instance due to the severity of Langham’s actions that not only involve violation of various applicable employment policies but, potentially, also state and federal criminal law. A suspension is insufficient in this instance as Langham’s actions diminish the public trust and respect of all Troopers and of ALEA. Langham’s demonstrated inability to comport himself with the professional standards and integrity required of a Trooper and of an officer of the

court mandate termination.”⁷

II. FACTUAL BACKGROUND

Having reviewed the documentary evidence, having heard the witnesses’ testimony, having observed the witnesses’ demeanor and assessed their credibility, the undersigned finds the greater weight of the evidence supports the following findings of fact.⁸

A. Employee’s Personnel File⁹

Langham’s performance appraisals while in State service reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
Langham received a three (3) day suspension for “unauthorized use of force.” ¹⁰		
05/01/2018	33	Exceeds Standards
05/01/2017	34	Exceeds Standards
05/01/2016	32	Exceeds Standards
07/15/2015	36.4	Exceeds Standards
08/01/2014	27.3	Exceeds Standards
08/01/2013	29.1	Exceeds Standards
08/01/2012	34.6	Exceeds Standards
08/01/2011	36.4	Exceeds Standards
08/01/2010	34.6	Exceeds Standards
08/01/2009	29.1	Exceeds Standards
10/13/2008	30.9	Exceeds Standards

⁷ ALJF

⁸ All references to exhibits and testimony are intended to assist the State Personnel Board in considering this Recommended Order and are not necessarily the exclusive sources for such factual findings.

⁹ See generally State Personnel Board Rule 670-X-18-.02(5) (employee’s work record, including performance and disciplinary history, and length of service considered in dismissing employee).

¹⁰ Langham struck a suspect with a closed fist during a traffic stop and after a hearing was suspended for three days, which suspension was served September 12-14, 2018.

04/14/2008 ¹¹	23.3	Meets Standards
	DHR	
10/01/2007	28	Exceeds Standards
Langham received a written warning on 1/17/ 2007 at DHR.		
10/01/2006	32	Exceeds Standards
11/30/2005	29	Exceeds Standards

B. State Personnel Board General Work Rules and ALEA Policies/Procedures Forming the Basis of the Charges

Board Rules 670-X-19-.01(1)(a)(4), (8) and (1)(b)(2), (10), (13) provide, in pertinent parts:

670-X-19-.01 General Work Rules.

(1) In addition to any special rules issued by the various appointing authorities for the guidance of their employees, the following standard general work rules shall apply to all classified employees:

(a) Violations that normally result in disciplinary actions of increasing severity:

....

4. Failure to perform job properly.

...

8. Violation of specific department rules.

....

(b) More serious violations that may result in suspension or discharge on the first offense.

...

¹¹ Final Probationary Evaluation as Trooper.

10. Serious violation of any other department rule.

...

13. Conduct unbecoming a state employee.

...

ALEA PERSONNEL POLICIES AND PROCEDURES

...

II. GENERAL WORK RULES

(1) In addition to any special rules implemented by the various Division Directors for the guidance of their employees, the following standard general work rules shall apply to all Agency employees. The lists are not all-inclusive and there is no implication that discipline may not be imposed for other sufficient reasons. These rules are consistent with those of the Rules of the State Personnel Board, as amended, Chapter 670-X-19-.01.

(a) Violations that normally result in disciplinary actions of increasing severity:

...

5. Failure to perform job properly.

...

8. Violation of specific department rules.

...

(b) More serious violations that may result in suspension or termination on the first offense:

...

10. Serious violation of any other department rule.

...

13. Conduct unbecoming a state employee.

III. FACTS FORMING BASIS FOR DISMISSAL

On December 21, 2018, ALEA placed then-Trooper Langham on administrative leave during an investigation of allegations that Langham had engaged in potentially illegal activity. Scottie Chandler, Deputy Secretary of ALEA, authorized an investigation to be conducted by ALEA'S Integrity Unit headed by Michael Bryan "Mike" Trotter.¹² Commander Trotter testified that Langham investigation was conducted respecting Langham's rights under the state and federal constitutions regarding self-incrimination and extant case law, including *Garrity v. New Jersey*. Langham's administrative statements were not shared with the criminal investigations.

Langham's estranged wife, who was filing for a divorce, provided ALEA with an email containing allegations against Langham. Langham as part of the temporary divorce decree attended a three (3) week inpatient drug rehabilitation program at Bradford Health Services in Warrior, Alabama. Langham was released from treatment on December 14, 2018.

On December 21, 2018, Lydia Langham obtained a Protection from Abuse (PFA) in Geneva County, Alabama (Case Number DR 2018-000093) against Langham.¹³ Commander Trotter testified that Langham, being subject to a "PFA",

¹² ALEA Exhibit 10, p. 5.

¹³ ALEA Exhibit 10, p. 11.

would not be able to do his job since he could not have legal access to firearms. Commander Trotter testified Langham's APOST certification is "locked" and Langham's future APOST certification would be subject to a character review by the Commission.

Langham's activities leading up to his dismissal by ALEA were based on operative facts that caused him to enter conditional pleas in multiple cases to what were felonies but handled under pretrial diversion and *nolle prosequi* by the District Attorney upon Langham's completion of all the requirements for his pretrial diversion agreement.¹⁴

Commander Trotter described the administrative investigation's findings including admissions by Langham that he had mailed oxycontin to a patient he had met at Bradford named "Keith." The pills were intercepted because Lydia Langham called to alert Bradford that Langham had revealed to her that he had sent them. Bradford staff confirmed Lydia Langham had called them. Langham claims he also called, in the presence of his Pastor, to intercept the pills. Bradford intercepted three (3) pills. Langham mentioned sending nine (9) pills. Langham's efforts to obtain and mail controlled drugs to a person in a drug rehabilitation program without the benefit of a prescription from one authorized to prescribe violated ALEA DPS Order 1-0.¹⁵

¹⁴ Langham's Exhibit 19.

¹⁵ ALEA Exhibit 5.

Langham's actions were violative of ALEA DPS Order 2-15 and unbecoming of an ALEA officer.¹⁶ Langham's actions brought discredit to ALEA and DPS and to his fellow troopers in violation of ALEA and DPS's Code of Ethics.¹⁷ The expectation is that one should keep his private life "unsullied."

Langham's obtaining and keeping an illegal gun with an obliterated serial number in his Patrol vehicle in violation of ALEA DPS Order 3-7 also violated federal firearms laws.¹⁸ Langham's failure to properly account for the illegal firearm violated ALEA DPS Order 4-26. Langham repeatedly failed to do his job properly. He failed to properly document drug evidence and engaged in repeated egregious violations of ALEA and DPS orders, policies and procedures. He improperly stored drug evidence in his patrol vehicle, his home and carport.

On July 26, 2017, Langham during a traffic stop, took 30 Klonopin pills from Kim Miller. Langham told the ALEA DPS investigators he flushed the pills at the Geneva County Sheriff's office in the presence of Alabama Game and Fish Senior Conservation Enforcement Officer Joel Hendron. Hendron does not "ever" recall witnessing the destruction of evidence by Langham.¹⁹

Sergeant Marc Boyd testified Langham failed to follow policy on the illegal

¹⁶ ALEA Exhibit 6.

¹⁷ Testimony of Commander Trotter.

¹⁸ ALEA Exhibits 8 and 9.

¹⁹ ALEA Exhibit 10, p. 497 and p. 155.

gun he says he got from someone, whose name and address he did not get; a gun with the serial number obliterated that Langham admits carrying around in the console of his patrol vehicle in violation of ALEA DPS policies. In addition, Langham had marijuana and other drug evidence, a pile of “brown” weed unsecured in his carport and home office, along with other drug evidence that should have been processed according to ALEA DPS Policy.²⁰ Langham admitted keeping Kim Miller’s Klonopin pills which were not destroyed pursuant to ALEA DPS policy and the destruction of which Officer Hendron indicates he did not witness as stated by Langham. There was no paperwork on the destruction of the Klonopin as required by policy.

Langham called no witnesses. He suggests Langham’s performance appraisals should preclude Langham’s dismissal. Langham believes he should have been allowed to resign. He believes his punishment to be “too severe.” He suggests ALEA “was complicit” and looked the other way on Langham’s use of pain medications. Langham assured his chain of command that he and his parents were helping him structure his use of medications so as to not interfere with his performance as a Trooper.

IV. ISSUE

Did ALEA, as the appointing authority, have sufficient evidence to sustain

²⁰ ALEA Exhibit 10, pp. 104, 111.

Langham's dismissal based upon violations of ALEA and State Personnel Board Rules?

V. DISCUSSION

The purpose of the administrative appeal is to determine if the termination of the employee's employment is warranted and supported by the evidence. *Kucera v. Ballard*, 485 So.2d 345 (Ala. Civ. App. 1986); *Thompson v. Alabama Dept. of Mental Health*, 477 So.2d 427 (Ala. Civ. App. 1985); *Roberson v. Personnel Bd. of the State of Alabama*, 390 So.2d 658 (Ala. Civ. App. 1980). In *Earl v. State Personnel Board*, 948 So.2d 549 (Ala. Civ. App. 2006), the Alabama Court of Civil Appeals reiterated:

“[D]ismissal by an appointing authority ... is reviewable by the personnel board only to determine if the reasons stated for the dismissal are sustained by the evidence presented at the hearing.”

Id. at 559, quoting *Johnston v. State Personnel Bd.*, 447 So.2d 752, 755 (Ala.Civ. App. 1983).²¹

In determining whether an employee's dismissal is warranted, the departmental agency bears the burden of proving the charges warrant termination by a “preponderance of the evidence.” The law is well settled that a “preponderance

²¹The Alabama Court of Civil Appeals went further to hold: “both this court and the circuit court must take the administrative agency's order as ‘prima facie just and reasonable’ and neither this court nor the circuit court may ‘substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.’” *Id.* at 559, citing ALA. CODE § 41-22-20(k) (1975); *State Dept. of Human Res. v. Gilbert*, 681 So.2d 560, 562 (Ala.Civ.App. 1995).

of the evidence” standard requires a showing of a *probability* that the employee is guilty of the acts as charged. There must be more than a mere possibility or one possibility among others that the facts support the disciplinary action at issue. The evidence must establish that *more probably than not*, the employee performed, or failed to properly perform, as charged. *See Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 117 S.Ct. 1953, 138 L. Ed. 2d 327 (1997), holding that a “significant possibility” falls far short of the Administrative Procedure Act’s preponderance of the evidence standard. *See also Wright v. State of Tex.*, 533 F.2d 185 (5th Cir. 1976).²²

An administrative agency must act within its constitutional or statutory powers, supporting its decision with substantial evidence. “Substantial evidence has been defined as such ‘relevant evidence as a reasonable mind might accept as adequate to support a conclusion,’ and it must be ‘more than a scintilla and must do more than create a suspicion of the existence of a fact to be established.’” *Alabama Alcoholic Beverage Control Bd. v. Tyson*, 500 So.2d 1124, 1125 (Ala. Civ. App. 1986).

The undersigned has carefully considered all the evidence in this case and finds no basis for a lesser disciplinary action than dismissal. Accordingly, the

²²In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions handed down prior to the close of business on September 30, 1981.

undersigned finds the preponderance of the evidence warrants Langham's dismissal in this case. Therefore, the undersigned recommends to the Board that the dismissal of Stephen T. Langham by ALEA be UPHELD.

Done this the 25th day of June 2021.



JAMES JERRY WOOD
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